# APPENDICES

# APPENDIX A

## STATUTORY PROVISION

## NEW YORK GENERAL MUNICIPAL LAW

### § 120-w. Contracts and agreements for solid waste management, collection and disposal

1. Definitions. As used in this section:

(a) "Municipality" means a town, city, county, or village or any designated public agency thereof, or a garbage or sanitary district established under the Nassau county civil divisions act; or any two or more of the foregoing which are acting jointly in connection with a solid waste management facility, or a public authority.

(b) "Solid waste management-resource recovery facility" or "facility" or "project" means any facility, plant, works, system, building, structure, improvement machinery, equipment, fixture or other real or personal property which is to be used, occupied or employed beyond the initial solid waste collection process for the storage, processing, or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom including but not limited to recycling centers, transfer stations, baling facilities, rail haul or barge haul facilities, processing systems, resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, plants and facilities for compacting, composting or pyrolization of solid wastes, incinerators, and other solid waste disposal, reduction or conversion facilities. For the purpose of this section, solid waste management-resource recovery facilities include solid waste recovery and management projects as defined in subdivision two of section 51-0903 of the environmental conservation law.

(c) "Resource recovery" means the separation, extraction and recovery of useable materials or energy from solid waste through source separation, recycling centers or other programs, projects or facilities.

(d) "Person" means a municipality or other governmental body, public corporation or authority, private corporation, partnership or individual.

(e) "Source separation" means the segregation of recyclable materials from the solid waste stream at the point of generation for separate collection, sale or other disposition.

2. Notwithstanding the provisions of any other law, general, special or local relating to the length, duration and terms of contracts which a municipality may enter into, any municipality may enter into a contract with any person, upon such terms and conditions as may be agreed upon, for the design, construction, operation, financing, ownership or maintenance of a solid waste management-resource recovery facility, for the processing or disposal of solid waste or for a system of collection and disposal of municipal solid waste through resource recovery which may include source separation, for a period not to exceed twenty-five years, and, except in a city having a population of one million or more, for collection and disposal of municipal solid wastes by means other than resource recovery for a period not to exceed five years as provided for in this section.

* * * *

4. Construction, financing and operation of solid waste management-resource recovery facilities. (a) Notwithstanding the provisions of any other law, general, special or local relating to the length, duration and terms of contracts a municipality may enter into, any county, city, town or village, or any combination thereof, is hereby authorized and empowered from time to time to enter into contracts, leases or rental agreements, with, or grant licenses, permits, concessions or any other authorizations, to any person, upon such terms and conditions for such consideration and for such term or duration, not to exceed twenty-five years, as may be agreed upon by any county, city, town or village or any combination thereof,

and such person, whereby, for any purpose or purposes hereinafter referred to, such person is granted the right to construct, maintain, use, occupy or carry on activities in the whole or any part of a solid waste management-resource recovery facility on a site authorized by any county, city, town or village or any combination thereof.

* * * *

(c) The person, entering into any contract, lease, rental agreement, license, permit, concession, or other authorization referred to herein, with any county, city, town or village or any combination thereof, may be granted the rights hereinbefore referred to for any purpose or purposes as shall provide for the benefit of the people of any county, city, town or village or any combination thereof, and the improvement of their health and welfare, by the utilization of solid waste management-resource recovery systems, technology, processes and procedures, and for any purpose which aids in the financing of the construction and operation of a solid waste management-resource recovery facility for the benefit of any county, city, town or village or any combination thereof.

(d) The products generated by any solid waste management-resource recovery facility may be sold, utilized or otherwise disposed of, pursuant to contract, lease, rental agreement, license, permit, concession, or other authorization, between any municipality and any person, upon such terms and conditions for such consideration, and for such term or duration, not to exceed twenty-five years, as may be agreed upon by any municipality and such person.

(e) It is the intent of the legislature that overall cost should in all cases be a major criterion in the selection of contractors for award of contracts pursuant to this section and that, wherever practical, such contracts which include construction work should be procured through competitive bidding procedures as prescribed by sections one hundred one and one hundred three of this chapter.

It is further the intent of the legislature to acknowledge the highly complex and innovative nature of resource recovery technology for processing mixed solid waste, the relative newness of the variety of resource recovery systems now available, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for resource recovery projects which include in their scope various combinations of design, construction, operation, management and/or maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to the municipality to award a contract on the basis of factors other than cost alone, including but not limited to facility design, system reliability, energy efficiency, compatibility with source separation and other recycling systems and environmental protection. Accordingly, and notwithstanding the provisions of any general, special or local law or charter, a contract entered into between a municipality and any person pursuant to this section may be awarded pursuant to public bidding in compliance with sections one hundred one and one hundred three of this chapter or pursuant to the following provisions for the award of a contract based on evaluation of proposals submitted in response to a request for proposals prepared by or for the municipality:

(1) The municipality shall require that each proposal to be submitted shall include:

(i) information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals to project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract;

(ii) a proposal clearly identifying and specifying all elements of a cost which would become charges to the municipality, in whatever form, in return for the fulfill-

ment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to the cost of planning, design, construction, operation, management and/or maintenance of any facility; and clearly identifying and specifying all elements of revenue which would accrue to the municipality from the sale of any material or energy produced or from any other source; provided, that the municipality may prescribe the form and content of such proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation by the municipality of such proposal; and provided, further, that the municipality may set maximum allowable cost limits in any form in the request for proposals; and

(iii) such other information as the municipality may determine to have a material bearing on its ability to evaluate any proposal in accordance with subparagraph five of this paragraph;

(2) To provide for public information and review:

(i) prior to the issuance of a request for proposals pursuant to this paragraph, the municipality shall publish notice of such issuance in the official newspaper of the municipality, if any, in at least one newspaper of general circulation, in the state register and in the environmental notice bulletin. Concurrent with the publication of such notice a draft request for proposals shall be filed with the clerk or chief executive officer of the municipality;

(ii) after allowing a sixty day comment period and an additional ten days to review such comments, the municipality may publish the final request for proposals and concurrent with such publication shall publish notice of such issuance in the manner specified in item (i) of this subparagraph. Concurrent with the publication of the final request for proposals a set of comments filed in relation to the draft request for proposals and findings

related to the substantive elements of such comments shall be filed along with the request for proposals with the clerk or chief executive officer of the municipality and in the municipal public library or libraries in proximity to the proposed site or sites;

(3) Proposals received in response to such request for proposals shall be evaluated by the municipality as to net cost or, if a net revenue is projected, net revenue, and, in a manner consistent with provisions set forth in the request for proposals, may be evaluated on the basis of additional factors, including but not limited to the technical evaluation of facility design, system reliability, energy balance and efficiency, environmental protection, overall employment and recovery of materials. The evaluation of such proposals and the determination of whether a proposer is "responsible" may include, but shall not be limited to, consideration, in a manner consistent with provisions set forth in the request for proposals, of the record of the proposer in complying with existing labor standards and recognizing state and federally approved apprentice training programs, and the willingness of the proposer to provide for meaningful participation of minority group persons and business enterprises in the conduct of the work;

(4) The municipality may make a contract award to any responsible proposer selected pursuant to subparagraph three of this paragraph based on a determination by the municipality that the selected proposal is most responsive to the request for proposals and may negotiate with any proposer; provided, however, that if an award is made to any proposer whose total proposal does not provide either the lowest net cost or, if a net revenue is projected, the greatest net revenue of any proposal received, the municipality shall adopt a resolution after public hearing which includes particularized findings relevant to factors evaluated pursuant to subparagraph three indicating that the municipality's requirements are met

by such award and that such action is in the public interest.

* * * *

6. An action, suit or proceeding contesting the validity of a contract awarded pursuant to this section, or the validity of the procedures relating to such award, must be commenced within sixty days after publication of notice of such award as hereinafter prescribed, if the following requirements are met:

(a) official action of the municipality in awarding a contract under this section shall contain a statement that the validity of such contract and the procedures relating to its award may be contested only if:

(1) such action, suit or proceeding is commenced within sixty days after the date of publication of such official action; and

(2) such award of procedure was not authorized pursuant to this section; or

(3) any of the provisions of this section which should be complied with at the date of the publication of such official action have not been substantially complied with; or

(4) a conflict of interest can be shown in the manner in which the contract was awarded;

* * * *

**APPENDIX B**

# COMMERCIAL WASTE COLLECTION AND RECYCLING SERVICE AGREEMENT

between

THE TOWN OF BABYLON
ON BEHALF OF THE TOWN OF BABYLON
COMMERCIAL GARBAGE DISTRICT NO. 2
AND
BABYLON SOURCE SEPARATION COMMERCIAL, INC.

* * * *

## ARTICLE 1

## DEFINITIONS

* * * *

*Applicable Law* means the Common Law, any law, regulation, requirement or order of any federal, state or local agency, court or other governmental body, including, without limitation, the Code of the Town of Babylon, the Town's Solid Waste Management Plan and any permits, licenses and governmental approvals issued or granted with respect to the Disposal Site, the Materials Processing Facility or the performance of any obligations under the Agreement or any other agreement entered into in connection therewith.

* * * *

*Disposal Site* means the Town Resource Recovery Facility, the Town's landfills, or any other landfill, resource recovery facility or other disposal site that is properly licensed and permitted for disposal of MSW under Applicable Law which shall include all planning, zoning and environmental restrictions and requirements of the particular location of the Disposal Site, and which Disposal Site has been approved by the Town.

* * * *